211.

SUPREME COURT OF THE UNITED STATES.

No. 174.

DAVID B. HERMAN, PLAINTIFF IN ERROR,

vs.

JAMES PHALEN.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR THE EASTERN DISTRICT OF LOUISIANA.

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Gideon, Printer.

United States circuit court, fifth circuit, district of Louisiana.

JAMES PHALEN
vs.
DAVID B. HERMAN. } No. 1570.

Pleas and proceedings before the honorable circuit court, fifth circuit and district of Louisiana.

At a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the December term of said court, held at the city of New Orleans, on the 22d day of March, in the year of our Lord one thousand eight hundred and forty-seven.

Be it remembered, that heretofore, to wit, on the eleventh day of February, 1847, came James Phalen, by his attorneys, Johnson, Allen, and Hale, esquires, in the clerk's office of said court, and filed a transcript or record, which is in the words and figures following, to wit:

JAMES PHALEN, a citizen of the State of New York,
vs.
DAVID B. HERMAN, a citizen of the State of Texas.

In the district court of the United States, for the district of Texas, exercising the powers and jurisdiction of a circuit court.

Whereas the undersigned judge of the district court of the United States, for the district of Texas, was employed as counsel in a number of cases, of which the present case is one, which renders it improper, in his opinion, to set on the trial of this suit; and whereas it is apparent from the petition filed that the subject matter of this suit is cognizable only in the circuit court of the United States; and whereas there is no judge, except the undersigned, authorized by law to hold said court for the trial of said cause, it is hereby ordered, upon application of the plaintiff in this cause, that this fact be entered upon the records of the court; and it is further hereby ordered, that an authenticated copy of this order, together with all the proceedings in this suit, shall be forthwith certified by the clerk of this court to the circuit court of the United States, for the circuit of Louisiana, sitting at the city of New Orleans, the same being the most convenient circuit court, in the next adjacent State hereto, for such order and proceedings in said circuit court of Louisiana, in this case as to the said court may seem agreeable to law.

January 23d, 1847. JOHN C. WATROUS.

To THOMAS BATES, esq.,
Clerk United States district court.

[REC. CLXXIV, D. T. 1850.]—1

UNITED STATES DISTRICT COURT,
District of Texas.

Be it remembered, that there was begun and holden in the city of Galveston, on the first Monday of February, in the year of our Lord one thousand eight hundred and forty seven, a district court of the United States, for the district of Texas; the honorable John C. Watrous, presiding as judge; John M. Allen, marshal; and Thomas Bates, clerk.

To the honorable John C. Watrous, judge of the district court of the United States, for the district of Texas, exercising the powers and jurisdiction of a circuit court of the United States, in and for the same.

The petition of James Phalen, who is a citizen of the State of New York, complaining against David B. Herman, who is a citizen of the State of Texas, respectfully showeth unto your honor:

That by virtue of an act of the Rebublic of Texas, entitled "an act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of the general land office," passed on the fourteenth day of December, A. D. 1837; a copy of which act is made part of this petition, and marked A, a board of land commissioners was established for each county of said Republic, whose powers, duties, and proceedings were therein, amongst other things, defined, described, and regulated; and that it was enjoined upon the said board of land commissioners, for each respective county, to investigate all claims upon the Republic of Texas for head rights to lands; and the same board was thereby authorized and required to grant to any person or persons a certificate of their claim or claims upon such proof being made to them, by the party or parties claiming, as was therein required, setting forth in said certificate the amount of land the claimant was entitled to, upon what conditions, and the time when he, she, or they emigrated to that country. That on the twenty-sixth day of January, A. D. 1839, another act was passed by the Congress of the Republic of Texas, entitled "an act amending an act supplementary to an act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of the general land office," a copy of which act is also made part of this petition, and marked B.; by virtue of which said act it was provided that the chief justices, associate justices, and county clerks, of each and every county of the Republic of Texas, should be constituted boards of land commissioners for their respective counties, and that they should be invested with like powers and authorities as those conferred upon the board of land commissioners by the act of the Republic of Texas above referred to; that John Bevil, being duly elected, sworn, and qualified as chief justice of the county of Jasper, in said Republic; and W. H. Stark being duly elected, chosen, and qualified as an associate justice of the county court for the said county of Jasper; and A. G. Parker being duly selected and qualified as clerk of the county court of said county, did, on [the] fifth day of July, A. D. 1839, acting as the board of land commissioners in and for the county of Jas-

per, make, and issue to Felix G. Hunt, as they were by law authorized to do, the following certificate, to wit:

No. 175.

REPUBLIC OF TEXAS,
County of Jasper.

This is to certify, that Felix G. Hunt has appeared before the board of land commissioners for the county of Jasper, and proved, according to law, that he arrived in this Republic in the year A. D. 1834; and that he is a married man, and entitled to one league and one labor of land, upon the condition of paying at the rate of three dollars and fifty cents for each labor of irrigable land; two dollars and fifty cents for each labor of temporal or arable land; and one dollar and twenty cents for each labor of pasture land, which may be contained in the survey secured to him by this certificate.

Given under our hand this the 5th day of July, 1839.

JOHN BERIL, *President*.
W. H. STARK,
Associate Commissioner.

Attest: A. G. PARKER, *Clerk*.

That upon the back of said certificate is endorsed the following described assignment or transfer of the same, to wit:

REPUBLIC OF TEXAS, *county of Jasper*.

Know all men by these presents, that Felix G. Hunt, for and in consideration of the sum of nine hundred and fifty dollars, cash in hand paid, the receipt whereof is hereby acknowledged, have this day bargained, sold, aliened, and conveyed, and do by these presents, bargain, sell, alien, and convey, unto Martin Parmer, his heirs and assigns, the within certificate for one league and one labor of land; and will warrant and forever defend the right and title thereof against myself, my heirs, or creditors, and all other claimants, and I do hereby authorize the commissioner of the general land office to issue a patent to the within certificate for one labor of land, in the name of Martin Parmer, his heirs, or assigns.

In testimony whereof I have hereunto set my hand and seal this 25th day of July, A. D. 1839.

FELIX G. HUNT. [SEAL.]

Attest: DANIEL ALEX. KELLY.

And that at the foot thereof is the following described certificate of acknowledgment of the said Felix G. Hunt, therein named, made before John Beril, chief justice of the said county of Jasper, and authorized by law to take and certify such acknowledgment as ex officio acting notary public of said county; said certificate being in due and legal form, to wit:

REPUBLIC OF TEXAS, *county of Jasper.*

Personally came and appeared before me, this day, Felix G. Hunt, who acknowledged that he signed, sealed, and delivered the above and foregoing power of attorney and deed for the purposes therein contained and set forth.

Given under my hand and seal of office, in the town of Jasper, this 25th day of July, A. D. 1839.

[Jasper county court seal.]

JOHN BERIL, *Chief Justice, and ex officio notary public.*

That on the twentieth day of August, A. D. 1839, the same Martin Parmer, to whom the said certificate was, by virtue of the above described endorsement and acknowledgment duly and legally transferred and assigned, caused a certain public instrument of sale to be made by William Fairfax Gray, a notary public in and for the county of Harrisburg, and the Republic of Texas aforesaid, duly sworn and commissioned as such, and delivered the same to your petitioner; by virtue and effect of which instrument—a copy whereof is also made a part of this petition, and marked C—all the right, title, and interest, of the said Martin Parmer in and to the said certificate, together with all his rightful and legal claims and demands upon the said Republic of Texas, and its officers, accruing by said certificate, were transferred and assigned to your petitioner, and became vested in him, as will more fully appear by the tenor of the said instrument. That thus being the lawful holder and owner of said certificate, your petitioner, by virtue thereof, thereafterwards, to wit, on the twelfth day of October, 1841, caused the same to be located upon, and a survey to be made of the following described parcel of land, by George H. Bringhurst, then being county surveyor of Harris county, in the aforesaid Republic, to wit, beginning at a willow tree, in a thicket at the edge of the Cypress bayou, marked BM; thence north, 8,125 varas, to a stake and mound in the prairie; thence east 3,200 varas, to a stake and mound in the prairie; thence south 8,125 varas, to a stake and mound in the prairie, crossing the said bayou on this line; thence west 3,200 varas, to the place of beginning, containing one league and labor of land. The premises aforesaid being situate on the head waters of Cypress bayou aforesaid, in the said county of Harris, about twenty-seven miles northwestwardly from the city of Houston; whereupon your petitioners then and there entered into possession of the same, and, by virtue of the statute, in such cases made and provided, was then and there seized of the premises, with their appurtenances, in his own demesne as of fee and right, by taking the profits thereof, to the value of five hundred dollars by the year.

That, being so thereof seized and possessed, on the 31st day of May, A. D. 1846, in the county of Harris aforesaid, the said David B. Herman, with force and array, broke and entered the close of your petitioner, being a part of the above described league and labor of land, to wit, twelve hundred and eighty acres thereof, situate on Cypress bayou aforesaid, beginning at the same willow tree described in the above men-

tioned surveys; running thence north along the first described line of the same, 2688 varas, to a stake and mound in the prairie; thence east 2688 varas to a stake and mound in the prairie; thence south 2688 varas to a stake and mound in the prairie, crossing the said Cypress bayou; thence west 2688 varas to the place of beginning; the close aforesaid being and including a large portion of the league and labor of land so located and surveyed, as aforesaid, for your petitioner. And that the said defendant, having so entered with force and arms, then and there disseized and evicted your petitioner of and from the close aforesaid, and still unjustly withholds the same, and with force and arms, as aforesaid, prevents him from re-entering upon the same; and other wrongs the said defendant, having so entered as aforesaid, then and there did, and hath continued to do up to the time of the filing of this petition, to the damage of your petitioner five thousand dollars, whereof he hath been greatly injured in the premises.

And your petitioner further showeth unto your honor that, by force of the twenty-third section of the act of the Republic of Texas, entitled "An act of limitations," passed on the fifth day of February, A. D. 1841, a copy whereof is made part of this petition, and marked D, the right of action hath accrued to, and vested in, him, to demand and recover against the defendant possession of the close aforesaid, as well as damages for the injuries and wrongs done as aforesaid, to wit, within the State of Texas, and within the jurisdiction of this court.

Wherefore your petitioner prays that the defendant be cited, in due form of law, to appear before the district court of the United States, for the district of Texas, exercising the powers and jurisdiction of a circuit court of the United States, at the term thereof next to be held at the city of Galveston, in the State of Texas aforesaid, to answer unto your petitioner in the premises; and that your petitioner be adjudged to recover possession of the close of twelve hundred and eighty acres aforesaid, against the said defendant, whereof he was disseized in manner aforesaid; and that he may have his writ of possession against the said defendant awarded to him; also that he may recover judgment for his damages, together with costs of suit, and for such other relief in the premises as to the court may seem meet.

JOHNSON, ALLEN & HALE,
Att'ys for plaintiff.

A.

An act entitled an act to reduce into one act, and to amend the several acts relating to establishing of a general land office.

Sec. 1st. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That there shall be and is hereby established a general land office for the Republic of Texas, to be located at the seat of government, or at such place as may hereafter be designated by law, the chief officer of which shall be called the commissioner of the general land office, which said officer

shall be appointed by the President, by and with the advice and consent of the Senate; shall enter into bond with three or more securities, payable to the President or his successors in office, in the penalty of fifty thousand dollars, conditioned for the faithful performance of the duties of his office; said bond and securities to be approved by the President and Senate, which bond shall be filed in the office of the secretary of state, and shall hold his office for the term of three years. Provided the provisions of this section shall not affect the present incumbent of that office, except so far as relates to his giving bond and security, and holding his office for three years from the date of his appointment; and the said commissioner of the general land office shall receive a salary of three thousand dollars per annum, payable quarterly.

Sec. 2. Be it enacted, that the commissioner of the general land office, be, and he is hereby, authorized to appoint a chief clerk, which said clerk shall receive a salary of sixteen hundred dollars per annum, and two assistant clerks, who shall receive as a salary, twelve hundred dollars each, per annum, payable quarterly.

Sec. 3. Be it further enacted, that the said chief clerk shall enter into bond, with three or more securities, to be approved by the commissioner of the general land office, in the sum of twenty thousand dollars, payable to the President or his successors in office, conditioned for the faithful performance of the duties of his office (which bond shall be deposited in the office of the secretary of state) who in case of the absence of the commissioner of the general land office, or his inability to attend to the duties thereof, shall perform all the duties appertaining to said office.

Sec. 4. Be it further enacted, that all officers appointed, or to be appointed, under the provisions of this act, shall, before entering on the duties of their office, take and subscribe the following oath, to wit: "I, A B, do solemnly swear that I will faithfully discharge the duties of my office without favor or partiality, so help me God," which said oath shall be transmitted to, and filed in the office of, the secretary of state.

Sec. 5. Be it further enacted, that the commissioner of the general land office shall cause to be provided a seal of office, which seal shall not be changed except by law; and certified copies of any records, books, or papers, belonging to said office, under the signature of the said commissioner or chief clerk, with the seal of office thereunto attached, shall be competent evidence in all cases where the originals could be evidence.

Sec. 6. Be it further enacted, that the commissioner of the general land office be entitled to, and shall keep charge of, the seal; and also that he be and is hereby entitled to, and shall have custody and control of, all books, records, papers, and original documents appertaining to the titles of lands heretofore, and by the provisions of the law, denominated archives; and that the said books, records, papers, and original documents shall become and be deemed the books and papers of said office.

Sec. 7. Be it further enacted, that all patents issuing from the

land office shall be in the name of the Republic of Texas, and under the seal of said office shall be signed by the President of the Republic and countersigned by the commissioner of the general land office, or by the chief clerk thereof.

Sec. 8. Be it further enacted, that no person appointed to an office instituted by this act, or employed in any such offices, shall directly or indirectly be concerned in the purchase of any right, title, or interest in any public land, either in his own name, right, or interest, for any other person, or in the name or right of any other person, in trust for himself; nor shall take, nor receive, any fee or emolument, for negotiating or transacting the business of said office, other than those fees allowed by law. Any person offending in the premises against the prohibitions of this act shall, on conviction thereof before the district court, be removed from office, and fined in any sum not less than five hundred dollars, and shall forfeit all the land he owns in the Republic, and never after be allowed to hold any office of trust or profit in this Republic.

Sec. 9. Be it further enacted, that there shall be elected by joint vote of both houses of Congress, for each county, a county surveyor, who shall reside at the county seat, and whose duty it shall be to receive and examine all field notes of surveys which have been, or may hereafter be made, in said county, and upon which patents are to be obtained, and shall certify the same under his hand to the commissioner of the general land office, after having recorded the same in a book to be kept by him for that purpose, and shall immediately return the same to the president of the board of land commissioners of said county. He shall, before entering upon the duties of his office, enter into bond, with three or more securities, to be approved by the board of land commissioners of the county, in the sum of ten thousand dollars, payable to the president or his successors in office, conditioned for the faithful performance of his duties; which said bond shall be recorded in the clerk's office of said county, and the original transmitted to the office of secretary of state; and the said surveyor shall hold his office for three years, and be re-eligible. He shall be entitled to charge on all field notes and plats presented to him for his inspection, for every set of field notes and plat of a league and labor of land, five dollars; for one third of a league, four dollars; and for every less quantity, three dollars. His books shall be open at all times for inspection, and he shall be allowed thirty-seven and a half cents for every search. He shall appoint as many deputy surveyors as he may deem necessary for the county; and shall administer to them the oath of office, and take the bond hereinafter prescribed, and shall furnish them such instructions as may be furnished to him from time to time by the commissioner of the general land office. And such deputy surveyor, before he enters upon the duties of his office, shall enter into bond, with two or more securities, to be approved by the county surveyor, in the sum of five thousand dollars, payable to the President or to his successors in office, conditioned for the faithful performance of the duties of his office; and for such appointment of a deputy surveyor, the county

surveyor shall be allowed to charge and receive from the person so appointed the sum of five dollars.

Sec. 10. Be it further enacted, that it shall be the duty of each deputy surveyor, to administer an oath to each individual employed by him as chain carrier, or marker, for the faithful performance of his duties as such, in accordance with the instructions given him; and no African or Indian, or descendant of either, or any person under the age of sixteen years, shall be employed in either of the above capacities; and further, it shall be the duty of said surveyors to subscribe the name of each of the chain carriers to his field notes, previous to his returning the same to the county surveyor. He shall also state, to the best of his knowledge or belief, the number of labors of irrigable lands, the number of labors of temporal or arable lands, and the number of labors of pasture lands, in each survey, for that class of claimants who are entitled to land under the constitution and colonization laws, which shall be plainly written out in the field notes, and also inserted in each patent; and for all such surveys he shall charge and receive three dollars for each English lineal mile actually run.

Sec. 11. Be it further enacted, that there shall be elected by joint vote of both houses of Congress, a commissioner, who shall be president of the board, and two associate commissioners for each and every county, who shall compose and constitute a board of commissioners for their respective counties, to be styled a "board of land commissioners," whose duty it shall be to investigate all claims on this Government for head rights to lands; and they are hereby authorized and required to grant to any person or persons a certificate of their claim or claims upon such proof being made to them by the party or parties claiming as herein required. Setting forth in said certificate the amount of land the claimant is entitled to, upon what conditions, and the time when he, she, or they emigrated to this country. The presidents of the boards of land commissioners shall be receivers of public moneys for their respective counties, and shall enter into bond with good and sufficient security, to be approved by the county court, or if there be no county court, the board of land commissioners, in the sum of twenty thousand dollars, payable to the President of the Republic of Texas, or his successors in office, and conditioned for the payment of all sums which may be received by him on account of the public lands, to the Secretary of the Treasury for the use of the Republic, which bond shall be recorded by the clerk of the county court, and the original transmitted to the office of the secretary of the State, and for all public moneys which he may receive and pay over, he shall [be] allowed to charge and receive two per cent.

Sec. 12. Be it further enacted, That every person who shall claim a title to land in this government by virtue of the colonization laws, or by residence in the county at the declaration of independence, shall be required to take and subscribe the following oath: "I do solemnly swear that I was a resident citizen of Texas at the date of the declara-

tion of independence, that I did not leave the country during the campaign of the spring of 1836, to avoid a participation in the struggle; that I did not refuse to participate in the war, and that I did not aid or assist the enemy; that I have not previously received a title to my quantum of land, and that I conceive myself justly entitled, under the constitution and laws, to the quantity of land for which I now apply." They shall also be required to prove, by two or more good and creditable witnesses, as the commissioners may require, that they were actually citizens of Texas at the date of the declaration of independence, and have continued so to the present time; and they also shall be required to prove, in like manner, whether they were married or single at the time of the declaration of independence, and what amount of land they were entitled to under the law: Provided, widows and orphans shall not be required to take the oath herein prescribed; and all persons claiming a grant to land of this government by inheritance or by purchase, shall prove in the same manner as above stated in this act—widows, orphans, or their legal representatives not excepted—that the person whose estate they claim is entitled to a grant to land of this government by the laws of the country, or that the person of whom they purchased is actually entitled to said grant to lands of this government; and no purchaser of a head right shall be entitled to receive a grant, either as assignee or in the name of the original claimant, unless proof be also made that the person represented as entitled to the grant is actually a resident of the Republic at the time the application for the grant is made; and all orders of surveys for head rights, procured under the colonization laws previous to the declaration of independence, shall be submitted to the examination of land commissioners, and the holders of the same, whether they be original claimants, their heirs or assignees, shall be subjected to the same formalities and requisitions in procuring said head rights as pointed out for other individuals in this law.

Sec. 13. Be it further enacted, that any person claiming the benefits of any particular colonization law of Coahuila and Texas, during their existence, fixing the prices to be paid for lands by the colonist, shall prove, by at least two respectable witnesses, that he or she was actually residents of Texas during the time said law was in force, which proof, so made before said board of land commissioners, shall entitle the claimant to have his or her land at the price fixed upon by said colonization law, which was in force at the date of said claimant's emigration to this country.

Sec. 14. Be it further enacted, that there shall also be elected for the several counties a clerk, by joint vote of both Houses of Congress, who shall keep in a well bound book, to be kept by him for that purpose, a correct account of all the transactions of the board of land commissioners, the name of every person to whom a certificate shall be given, the amount of land granted to each person, the time of their emigration to the country, and the name or names of the witness or witnesses by whom the claimants severally proved their claims; and the

said clerk shall, at the end of every month, forward to the commissioner of the general land office a correct list of the names to whom certificates have been given, the amount of land granted to each individual, and the date of the claimant's emigration to the country; and the said commissioner of the general land office shall keep a record of all such returns which may be made to his office; and the said clerk shall, before entering upon the duties of his office, give a bond, with good security, to be approved of by the board of land commissioners, for the sum of five thousand dollars, payable to the President or his successors in office, conditioned for the faithful performance of the duties of his office as clerk and register, and the safe keeping of the records thereof.

Sec. 15. Be it further enacted, that every certificate which may be issued by the authority of this act, shall be signed by the board of land commissioners and attested by the clerk, and for every such certificate so issued, the party claimants shall pay the sum of five dollars, one-half of which shall go to the clerk, and the other be equally divided between the quorum of the board actually presiding. And it is hereby made the duty of said board, and they are required, to meet at the court-houses of their respective counties on every other Thursday, then and there to transact the duties required of them by this act, and shall remain in session so long as may be necessary for the transaction of the business before the board, for which services they shall be entitled to demand and receive the fees herein allowed, and no more: Provided, that after the land offices shall have been open three months, the said board shall not be required to meet only on the first Thursday of each month, and if that day should fall on a regular court week, so as to interfere with it, then they shall meet on the next Thursday thereafter: And further provided, that a majority of said board shall form a quorum to transact the duties herein required of them.

Sec. 16. Be it further enacted, that the decision of a majority of said board of commissioners shall be necessary to entitle any person to a certificate of their claims; but if a majority of said board should decide that any claimant who presents himself or herself before them for a certificate of claim is not entitled to the amount of land which they claim, said claimant may take an appeal from their decision to the next district court for the county in which said claimant may live, citing the board of commissioners to appear as defendants, where it shall be tried; and in all such cases, the district attorney shall represent the interest of the Republic, for which services he shall be allowed a tax fee of ten dollars on every such case, to be paid by the applicant, together with all other costs of suit in case he or she fails to obtain a verdict in his or her favor. But if the applicant should obtain a verdict for the amount of land which he or she claims, the costs of the suit shall be paid by the Republic, when the commissioners shall issue a certificate in accordance with such decision.

Sec. 17. Be it further enacted, that any certificate of claim to land which has been or may be obtained in the manner and form herein

prescribed, shall be sufficient evidence to authorize any lawful surveyor to survey for any person holding such certificates, any lands which he may point out, agreeably to all the laws which do now, or may hereafter, exist on that subject: Provided, also, that where more than one application is made for the same tract of land to be surveyed, the settler or occupant shall have the preference, if their claims be otherwise equal: Provided, that no location or improvement made since the declaration of independence by persons who have, since that time, arrived in the country, shall be regarded when they come in conflict with the claims of those who were here at the declaration of independence. But those individuals, entitled to the six months' preference, shall have the right of locating their lands upon any vacant lands of the Republic, without regard to any improvements made by individuals who have arrived in Texas since the declaration of independence. In all other cases, or in case there be more occupants than one, the conflicting claims shall be summarily tried by the nearest justice of the peace, and six disinterested jurors summoned for that purpose; and, upon their decision, the surveyor shall grant to the successful party the field notes of the tract of land, giving in all cases the preference to the oldest occupant and settler: Provided, in all cases, that the claimant shall apply for such certificate in the county in which he or she may reside at the date of the passage of this act; and provided that persons claiming land by inheritance or assignment, shall apply for such certificate in the county where the testator died, or where the assignor lived at the time of making such transfer.

Sec. 18. Be it further enacted, that when two or more persons cannot agree to a division line of any land which has never been surveyed agreeably to law, it shall be lawful for either party to apply to any justice of the county or territory in which the land lies, or if there be no justice of the peace in the county or territory, then to the nearest justice in any county or territory, and make oath that he has tried, and has not been able to settle the dispute between himself and one or more other persons, (naming them,) concerning a division line; and the said justice shall issue a warrant to any lawful officer to summon the party or parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may choose to have summoned, to give evidence on a certain day, naming at what time and place. The justice shall also meet the parties, examine all the testimony before the jury, who shall, on oath, hear and determine the case in dispute, and shall also determine who shall pay the cost of suit. Each juror, in such case, shall be allowed two dollars per day for such services; the other officers such fees as have been already established by law for other similar services: Provided, that if the land in dispute shall be on a county line, it shall be lawful for a justice of either county in which part of the land may be, to act in such case; and in case either party be dissatisfied with the decision, they shall have the right to appeal to the district court within ten days, upon giving bond security for costs.

Sec. 19. Be it further enacted, that it shall be the duty of the surveyor, in all cases, before he runs a division line between two settlers claiming lands, to notify the party or parties interested, before running the same, in writing; and any survey which may be made, contrary to the true intent and meaning of this section of this act, shall not be a lawful one; and the field notes of every survey which shall be returned to any land office hereafter, for the purpose of getting a title for the same, shall be under oath of the surveyor, who shall swear it was executed according to law; and shall also swear the same was made prior to the closing of the land office by the consultation, or subsequent to the opening of the same by this act; and if made prior to the closing of the land office by the consultation, the same shall also be proved by at least two respectable witnesses.

Sec. 20. Be it further enacted, that the commissioner of the general land office is hereby authorized to grant to all persons holding an order of survey, legally obtained, previously to the closing of the land offices in one thousand eight hundred and thirty-five, and having a survey which was made agreeably to said order, and in conformity to law in all respects, a patent for the same, upon the holder presenting the certificate of some board of land commissioners that he is entitled to the quantity of land surveyed, and making such proof to them as is required by law, and upon his paying the several fees, as the laws require.

Sec. 21. Be it further enacted, that all lands surveyed for individuals lying on navigable water-courses, shall front one-half of the square on the water-course and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws will permit; and all others, not on navigable water-courses, shall be square, if previous lines will permit; and under no circumstances shall any one grant be located in more than two surveys.

Sec. 22. Be it further enacted, that each and every individual under the age of seventeen, who have volunteered in the service of their country, and who have received honorable discharges, shall be entitled to the same quantity of land as a head right, that they would be though they were twenty-one years of age, and upon the same conditions.

Sec. 23. Be it further enacted, that all single men who were in the Republic at the date of the declaration of independence, and entitled, under the constitution, to one-third of a league of land, and who have since married, or may marry within the next twelve months, shall be entitled to the additional quantity of two-thirds of a league and a labor of land. Provided, that the benefits of this section shall only extend to those who have contributed to the support and defence of their country; and provided this additional quantity shall not be allowed to any whose wife has received a league of land of this government.

Sec. 24. Be it further enacted, that whereas many persons have received titles under the colonization laws as colonist from the different commissioners of the county; and whereas many conditions were, by the law, attached to said titles, that all such conditions be, and are

hereby, cancelled, and the titles to all such lands are hereby ratified and confirmed. Provided, that such persons shall pay, or cause to be paid, to the president of the board of land commissioners of the county where such land may be situated, within six months after the opening of the land office, all money which may be due or owing on the same. Provided, that the condition of remaining in the county, and the provision prohibiting the sale to aliens shall not be repealed by this law. And further provided, that no title by this act shall be confirmed which was illegal or invalid *ab initio*. And further provided, that this act shall not extend to any grantee or individual for a greater amount of land than one league and one labor.

Sec. 25. Be it further enacted, that no person shall, by virtue of an improvement, have a right to claim more than one league and one labor of land, and that improvement shall consist in the clearing and fencing, in a farm-like manner, at least four acres; and this privilege shall not extend to any person or persons, who have previously received a title to the quantum of land to which they were entitled, nor to any person or persons entitled to a grant of land by purchase.

Sec. 26. Be it further enacted, that it is hereby declared that all empresarios' contracts having ceased on the day of the declaration of independence, all the vacant lands of Texas are the property of this Republic, and subject alone to the disposition of the government of the same.

Sec. 27. Be it further enacted, that in order to settle the claims of empresarios, each and every one of the same are hereby authorized to institute a suit against the President of the Republic of Texas; which suit or suits shall be tried in the county in which is situated the seat of government, and shall be tried as all other land suits are required to be tried. And should any empresario who should thus sue, fail to establish the claim for which he sues, he shall pay all the costs of said suit. Provided, that neither aliens, nor the assignees of aliens, shall be entitled to the benefit of this act.

Sec. 28. Be it further enacted, that it shall be the duty of the Attorney General to attend to all such suits in behalf of the Republic of Texas; and the President is hereby authorized to employ such additional counsel as in his opinion he may deem proper; the expenses of which shall not exceed one thousand dollars each case.

Sec. 29. Be it further enacted, that every volunteer who arrives in this Republic after the 2d day of March, 1836, and before the 1st of August, 1836, and has received, or may hereafter receive, an honorable discharge, and has taken the oath prescribed by the constitution, or who may have died, shall receive the quantity of land by this act secured to original colonists. Provided, that the priority of location mentioned in the thirty-eighth section of this act shall be adhered to; and further provided, that none but the person who served, or his heirs, shall be entitled to the benefit of this provision, and all augmentation shall accrue to the original claimants, and not to the person to whom it may have been transferred; provided no person who is entitled to the

Sec. 19. Be it further enacted, that it shall be the duty of the surveyor, in all cases, before he runs a division line between two settlers claiming lands, to notify the party or parties interested, before running the same, in writing; and any survey which may be made, contrary to the true intent and meaning of this section of this act, shall not be a lawful one; and the field notes of every survey which shall be returned to any land office hereafter, for the purpose of getting a title for the same, shall be under oath of the surveyor, who shall swear it was executed according to law; and shall also swear the same was made prior to the closing of the land office by the consultation, or subsequent to the opening of the same by this act; and if made prior to the closing of the land office by the consultation, the same shall also be proved by at least two respectable witnesses.

Sec. 20. Be it further enacted, that the commissioner of the general land office is hereby authorized to grant to all persons holding an order of survey, legally obtained, previously to the closing of the land offices in one thousand eight hundred and thirty-five, and having a survey which was made agreeably to said order, and in conformity to law in all respects, a patent for the same, upon the holder presenting the certificate of some board of land commissioners that he is entitled to the quantity of land surveyed, and making such proof to them as is required by law, and upon his paying the several fees, as the laws require.

Sec. 21. Be it further enacted, that all lands surveyed for individuals lying on navigable water-courses, shall front one-half of the square on the water-course and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws will permit; and all others, not on navigable water-courses, shall be square, if previous lines will permit; and under no circumstances shall any one grant be located in more than two surveys.

Sec. 22. Be it further enacted, that each and every individual under the age of seventeen, who have volunteered in the service of their country, and who have received honorable discharges, shall be entitled to the same quantity of land as a head right, that they would be though they were twenty-one years of age, and upon the same conditions.

Sec. 23. Be it further enacted, that all single men who were in the Republic at the date of the declaration of independence, and entitled, under the constitution, to one-third of a league of land, and who have since married, or may marry within the next twelve months, shall be entitled to the additional quantity of two-thirds of a league and a labor of land. Provided, that the benefits of this section shall only extend to those who have contributed to the support and defence of their country; and provided this additional quantity shall not be allowed to any whose wife has received a league of land of this government.

Sec. 24. Be it further enacted, that whereas many persons have received titles under the colonization laws as colonist from the different commissioners of the county; and whereas many conditions were, by the law, attached to said titles, that all such conditions be, and are

hereby, cancelled, and the titles to all such lands are hereby ratified and confirmed. Provided, that such persons shall pay, or cause to be paid, to the president of the board of land commissioners of the county where such land may be situated, within six months after the opening of the land office, all money which may be due or owing on the same. Provided, that the condition of remaining in the county, and the provision prohibiting the sale to aliens shall not be repealed by this law. And further provided, that no title by this act shall be confirmed which was illegal or invalid *ab initio*. And further provided, that this act shall not extend to any grantee or individual for a greater amount of land than one league and one labor.

Sec. 25. Be it further enacted, that no person shall, by virtue of an improvement, have a right to claim more than one league and one labor of land, and that improvement shall consist in the clearing and fencing, in a farm-like manner, at least four acres; and this privilege shall not extend to any person or persons, who have previously received a title to the quantum of land to which they were entitled, nor to any person or persons entitled to a grant of land by purchase.

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Sec. 27. Be it further enacted, that in order to settle the claims of empresarios, each and every one of the same are hereby authorized to institute a suit against the President of the Republic of Texas; which suit or suits shall be tried in the county in which is situated the seat of government, and shall be tried as all other land suits are required to be tried. And should any empresario who should thus sue, fail to establish the claim for which he sues, he shall pay all the costs of said suit. Provided, that neither aliens, nor the assignees of aliens, shall be entitled to the benefit of this act.

Sec. 28. Be it further enacted, that it shall be the duty of the Attorney General to attend to all such suits in behalf of the Republic of Texas; and the President is hereby authorized to employ such additional counsel as in his opinion he may deem proper; the expenses of which shall not exceed one thousand dollars each case.

Sec. 29. Be it further enacted, that every volunteer who arrives in this Republic after the 2d day of March, 1836, and before the 1st of August, 1836, and has received, or may hereafter receive, an honorable discharge, and has taken the oath prescribed by the constitution, or who may have died, shall receive the quantity of land by this act secured to original colonists. Provided, that the priority of location mentioned in the thirty-eighth section of this act shall be adhered to; and further provided, that none but the person who served, or his heirs, shall be entitled to the benefit of this provision, and all augmentation shall accrue to the original claimants, and not to the person to whom it may have been transferred; provided no person who is entitled to the

benefit of the first part of this section of this act, shall be entitled to the benefits of the latter part of the same; every person who has arrived in this Republic since the declaration of independence, and previous to the first of October, 1837, who is a free white person and the head of a family, and who actually resides within the government with his family, shall be entitled to a conditioned grant of twelve hundred and eighty acres of land, by paying the fees of office and of surveying. The condition of said grant shall be, that both grantee and his or her family shall remain and reside within this Republic, and do and perform all the duties required of other like citizens, for the term of three years; after which time he or she shall receive an unconditional deed for said land; and in no case, whatever, shall a grant of that description be made, unless it be satisfactorily proven that all the conditions and provisions of the law have been complied with; and all single free white men who have emigrated to this Republic since the declaration of independence, and previous to the first of October, 1837, shall be entitled to six hundred and forty acres of land; and if they married before the first day of October, 1837, they shall be entitled to an additional quantity of six hundred and forty acres of land upon the same conditions as above named; and all laws contrary to the meaning and provisions of this section are hereby repealed.

Sec. 30. Be it further enacted, that all officers and soldiers who engaged in the service of Texas previous to the 1st of March, 1837, whose families are now here, or may arrive within twelve months from the date of their discharges, shall be entitled to the same quantity of land as they would have been entitled to if their families had emigrated with them to the country.

Sec. 31. Be it further enacted, that the board of land commissioners are hereby authorized to grant to persons claiming lands of this government under the 29th section of this act, a certificate of their claims, upon the same proof being made to them as is required of other claimants, stating in said certificate the amount of land to which the claimant is by law entitled, at what time he or she arrived in this Republic.

Sec. 32. Be it further enacted, that the commissioner of the general land office shall, when required by the President of the Republic, or either House of Congress, make a plat of any land surveyed under the authority of the government, and give such information respecting the public lands and concerning the business of his office as shall be legally required.

Sec. 33. Be it further enacted, that the commissioner of the general land office shall be, and he is hereby, authorized to appoint a translator, who shall undergo an examination as to his qualifications, and shall understand the Castilian and English languages; and shall, before he enters upon the duties of his office, take and subscribe the oath of office herein prescribed; shall give bond with two or more good and sufficient securities in the sum of ten thousand dollars, to be approved of by the secretary of state, and shall be payable to the President or his successors in office, conditioned for the faithful performance of his

duties; and said translator shall hold his office for the term of three years, and shall be allowed a salary of two thousand dollars per annum, payable quarterly.

Sec. 34. Be it further enacted, that it shall be the duty of said translator to translate into the English language, and record in a book, to be kept by him for that purpose, all the laws and public contracts relative to the titles of land which are written in the Castilian language, and also to translate and record, in like manner, all original titles, which are written in the Castilian language, which may be on file in the office of the commissioner of the general land office.

Sec. 35. Be it further enacted, that should a vacancy occur during the recess of Congress, by death, resignation, or otherwise, of any member of either of the boards of land commissioners, or of the clerk of either of the boards, or of any county surveyor, it shall be the duty of the board of land commissioners to notify such vacancy to the commissioner of the general land office forthwith, and to recommend some person suitably qualified to fill such vacancy; whereupon it shall be the duty of the commissioner of the general land office to fill said vacancy by an appointment, and report the same to the Congress immediately on its next session, which officer shall continue to perform the duties of the office to which he is appointed, agreeable to the provisions of this act, until his successor is duly qualified.

Sec. 36. Be it further enacted, that so soon as the certified copy of the field notes and plot of any survey shall be made, and transmitted to the president of the board of land commissioners for the county where the land or part of it lies, and the amount of money which is fixed by law as the price of such land be paid, the president of the board of land commissioners shall endorse a receipt for such payment on the back of said field notes, for which he shall give a duplicate receipt, and transmit the field notes to the commissioner of the general land office, who shall forthwith make out in due form a patent for said land, and record the same in a book to be kept for that purpose, and transmit the original to the president of the board of land commissioners, for the county where the land lies, who shall enter a minute of the said patent on his books, and deliver the same to the party who is entitled to it, or some one authorized by him to receive the same, taking a receipt therefor; and the said patentees, in all cases, shall pay, as government fees, the prices fixed by the colonization laws of Coahuila and Texas, in force at the time they emigrated to this country; and if they emigrated subsequently to the second day of May, 1835, and previous to the declaration of independence, they shall be required to pay the amount fixed by a law, passed by the Congress of the State of Coahuila and Texas on the above date.

Sec. 37. Be it further enacted, that the President of the Republic be, and he is hereby, authorized to contract for the surveying, and cause to be surveyed at the expense of this government, a sufficient quantity of land to satisfy the holders of all land scrip that may have been issued and sold by this government, agreeably to the law in all

respects. And the secretary of the treasury is hereby authorized to pay out of any money in the treasury not otherwise appropriated, the expenses which may accrue in completing such surveys: Provided, it shall not exceed three dollars for each English lineal mile actually run.

Sec. 38. Be it further enacted, that where two or more locations have heretofore been made on, and titles granted for, the same piece of land, or where the boundaries of different titled surveys conflict with each other, the party who has his title or order of surveys of subsequent date, may, on proper showing of all the facts, and the certificate of a legal surveyor to the board of land commissioners of the county in which the land lies, have his former title cancelled by said board, and a new order issued for his quantum of land, or so much thereof as shall be affected by the conflicting lines or boundaries mentioned in this section.

Sec. 39. Be it further enacted, that the several land offices contemplated and established by this act, shall commence and go into operation on the first Thursday in February next. Provided, however, that the operations of the land office in the county of Red river shall not extend to any portion of the territory near the supposed boundary line between this and the United States Government of the north; and provided, also, that should any person obtain a certificate for land from said board of land commissioners for the county of Red river, who, at the date of the passage of this act, shall reside east of the boundary line hereafter to be run between Texas and the United States, said certificate shall be void, and their operations shall be confined to the granting and completing of land titles, to all those who, by the existing and previous laws, have acquired a preference in the first location. Of this class are all citizens who were residing in Texas on the day of the declaration of independence, and those volunteer soldiers who served a tour of duty in the army of Texas previous to that time.

For this class of claimants the land office shall be opened, and remain six months in operation, granting and completing titles alone to that class of claimants. After which, other legal claimants shall be entitled to have their land titles completed, as herein provided and directed. And the several boards of land commissioners shall be permitted and allowed to commence receiving applications for lands, and hearing testimony on the first Thursday of February next. And in case the country shall be invaded to an extent inducing the President to call out at least one-third of the militia for its defence, the commissioner of the general land office shall have the power to close the land offices by proclamation until such invasion has terminated; and all laws heretofore enacted on the subject of public lands shall be and they are hereby repealed.

Sec. 40. Be it further enacted, that each county in the Republic shall be considered and constitute a section; and that each county surveyor be required as soon as practicable, to make out or procure a map of each county, on which plats of all the deeded lands in the said county

shall be made, so as to make a fair showing of the same; for which he shall receive compensation by special appropriation hereafter to be made for that purpose.

Sec. 41. Be it further enacted, that audited claims against the Republic of Texas shall be receivable in payment of public dues on lands; provided, the benefits of this section shall not extend to any one individual for a larger quantity of land than two leagues and two labors; and any one offering to pay for lands in audited paper on the government, shall swear that he has not paid for as much as two leagues and two labors in such paper before, either by himself or his agent, which affidavit shall be filed with the chairman of the board of land commissioners.

Sec. 42. Be it further enacted, that all streams of the average width of thirty feet, shall be considered navigable streams within the meaning of this act, so far up as they retain that average width, and that they shall not be crossed by the lines of a survey.

JOSEPH ROWE,
Speaker of the House of Representatives.
MIRABEAU B. LAMAR,
President of the Senate.

Speaker of the House of Representatives. Vetoed by the President, and passed the House of Representatives by a constitutional majority, December 14, 1837.

JOSEPH ROWE.

Vetoed by the President, and passed the Senate by a unanimous vote. December 14, 1837.

S. H. EVERITT,
President pro tem. of the Senate.

"B."

An act amending an act supplementary to an act, entitled an act to render into one act, and to amend the several acts relating to the establishment of a general land office.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That the chief justices of counties, the associate justices, and the county clerks of each and every county of this Republic shall be, and they are hereby, constituted boards of land commissioners for their respective counties; the chief justice shall be president, and the county clerks shall be the clerks to said boards.

Sec. 2. Be it further enacted, that the said boards of land commissioners shall be governed by the same laws, and be entitled to the same emoluments, as provided for in the government of the boards of land commissioners in the act to which this is a supplement: Provided, that the clerk shall receive two dollars, and the balance shall be equally divided between the members of the board present.

Sec. 3. Be it further enacted, that it shall be the duty of the clerks of the present boards of land commissioners to deliver over to the clerks of the boards contemplated in this act, (so soon as they are organized,) all the records and papers they may have in their possession relating to the transactions of said board, and the presidents are hereby required to pay over to the secretary of the treasury all moneys they may have received as treasurers to said boards.

Sec. 4. Be it further enacted, that this act shall take effect from and after the second Monday of January, eighteen hundred and thirty-nine, and shall continue in force to the second Monday in January, eighteen hundred and forty, and no longer.

Sec. 5. Be it further enacted, that all laws and parts of laws conflicting with the provisions of this act be, and the same are hereby, repealed.

JOHN M. HANSFORD,
Speaker of the House Representatives.
DAVID G. BURNET,
President of the Senate.

Approved January 26th, 1839.

MIRABEAU B. LAMAR.

C.

REPUBLIC OF TEXAS,
County of Harrisburg.

By this public instrument be it known, that this day, before me, William Fairfax Gray, a notary public in and for the county of Harrisburg, and Republic of Texas aforesaid, duly commissioned and sworn, personally came and appeared the citizen, Martin Parmer, of the county of Jasper, who declared that, in and for the consideration of one thousand dollars, to him in hand paid by James Phalen, the receipt whereof is hereby acknowledged and confessed to his entire satisfaction, and an acquittance therefor granted, he does by these presents grant, bargain, sell, alien, convey, transfer, assign, and set over, with a full guarantee against all trouble, debts, mortgages, claims, evictions, donations, alienations, or other encumbrances whatsoever, unto the said James Phalen, his heirs and assigns, one league and one labor of land of the public domain of Texas, unlocated, being the land to which the citizen, Felix G. Hunt, was entitled as his head right, as set forth in land certificate, number one hundred and seventy-five, (No. 175,) issued by the board of land commissioners of Jasper county, signed by John Bent, president, and W. H. Stark, associate commissioner, and attested by A. G. Parker, clerk, bearing date the sixth day of July, A. D. 1839, which certificate, and the land accruing by virtue thereof, were sold and transferred to this vendor, by the said grantee, by deed of transfer bearing date the twenty-fifth day of July, A. D. 1839, and duly acknowledged before the honorable John Bent, chief justice of the county of Jasper aforesaid; which said certificate and deed of transfer are hereby made and declared to be part and parcel of this conveyance;

together with the buildings and other improvements thereon, and appurtenances thereof, rents, issues, and profits, rights of way and of water, and all and singular the other rights, privileges, and immunities to the same belonging, or in any wise appertaining.

To have and to hold the said certificate, and the land accruing by virtue thereof, and the appurtenances, rights, privileges, &c., thereof, as above described, unto the said , his heirs and assigns, to their proper use, benefit, and behoof, forever; and the said Martin Parmer, for himself and for his heirs, the title to said property to the said , his heirs and assigns, shall and will by these presents warrant and forever defend, against the lawful claims of all persons whomsoever; and the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty, which he himself hath or may have against his own vendor, or against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he might or could have done; and the said vendor does moreover hereby authorize the said purchaser, his heirs or assigns, to select, locate, and survey said land in any part of the Republic that he or they may think proper, and to demand and receive from the proper officers of the government a patent for the same, in his or their name or names, and to exercise all proper acts of ownership over it as fully and effectually as he himself might or could have done; and the said vendor will guarantee, and for himself, his heirs, &c., he does hereby guarantee, to the said purchaser, his heirs, &c., that the said certificate, number one hundred and seventy-five, (No. 175,) is a genuine one, and regularly and legally issued; and that the said deed of transfer is also genuine and made in good faith, and for a valuable consideration.

This done and passed in my office at the city of Houston, in the county and Republic aforesaid.

In testimony whereof the said vendor has hereunto set his hand and seal, in the presence of Alexander McDaniel and Peter Gray, witnesses of lawful age, who hereunto sign their names, together with the said vendor, and we, the aforesaid notary, on this twentieth day of August, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of Texas the fourth.

MARTIN PARMER. [SEAL.]
W. F. GRAY, *Not. pub.* [SEAL.]

Witnesses—
A. McDANIEL,
PETER GRAY.

(D.)

Act of limitation.

SEC. 23. Be it further enacted, that all certificates of head rights, land scrip, county warrants, or any other evidence of right to land recognised by the laws of this government, which have been located or

surveyed, shall be deemed and held as sufficient title to authorize the maintenance of actions of ejectment, trespass, or any other legal remedy given by law; all laws to the contrary notwithstanding.

Approved February 5th, 1841.

DAVID G. BURNET.

United States district court, district of Texas, exercising powers and jurisdiction of a circuit court; the President of the United States of America, to the marshal or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded to summon David B. Herman, if he be found in your district, to be and appear before the honorable the district court of the United States, exercising the powers and jurisdiction of a circuit court, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of February, A. D. 1847, to answer the petition and complaint of James Phalen, a citizen of the State of New York, in an action of trespass, the damages in which amount to the sum of five thousand dollars, of which you will serve the defendant with the accompanying copy.

Witness the hon. John C. Watrous, judge of said court, at the city of Galveston, this 22d day of January, A. D. 1847, and seventy-first year of the independence of the United States.

[SEAL.]

THOS. BATES, *Clerk.*

STATE OF TEXAS,
County of Galveston.

I hereby accept the service of the within writ for the defendant, acknowledging due and legal service to have been made by the proper officer in this case, and waiving all errors relative or appertaining thereto, or to the form and manner thereof, or to the want of a proper return herein by such officer.

Witness my hand this 22d day of January, A. D. 1847.

F. H. MERRIMAN,
Attorney for defendant.

In the district and circuit court of the United States, for the circuit of Texas.

JAMES PHALEN, a citizen of the State of New York,
vs.
DAVID B. HERMAN, a citizen of the State of Texas.

Proceedings of ejectment on trespass.

And now, to wit, January, A. D. 1837, the above named defendant comes into court and pleads to the petition and complaint of the plaintiff—"not guilty."

And further pleads that true it is that the survey mentioned and described in the plaintiff's petition of a league and labor of land upon the certificate purporting to have been granted to Felix G. Hunt, was

made in the manner and form, and at the time, set forth in the said petition. And further he says, that true it is that he, the said defendant, did on the day and in the manner mentioned in the said petition, procure to be located upon a portion of the said land thus located and surveyed, upon the certificate aforesaid, a certain tract and parcel of land, consisting of twelve hundred and eighty acres, situate, bounded, and described as follows, to wit: Situate on Cypress bayou, east of and adjoining a survey made for James Askins, about twenty-eight miles northwest from the city of Houston, beginning at a willow tree, marked B, in a thicket on the north side of Cypress bayou for southeast corner; thence north two thousand six hundred and eighty-eight varas, to a stake and mound in the prairie, for second or northeast corner; thence east two thousand six hundred and eighty-eight varas to a stake and mound in the prairie, for third or northeast corner; thence south two thousand eight hundred and eighty-eight varas, to a stake and mound in the prairie, for fourth or southeast corner crossing Cypress bayou; thence west two thousand six hundred and eighty-eight varas, to the place of beginning, containing twelve hundred and eighty acres, and being the same close and tract of land described in the petition of the plaintiff. That true it is he has taken possession of the said close and tract of land, and as of his demesne as of fee and of right, and has expelled and excluded the said plaintiff from the same from and during the time in his said petition mentioned. Because he, the said defendant, in fact says that the said plaintiff has and had no right, title, or interest in and to the said close and tract of land.

1st. Because he says that the supposed act mentioned in the said plaintiff's petition, viz: The "act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of the general land office," alleged to have been passed on the fourteenth day of December, A. D. 1837, is unconstitutional and void, in this, viz: It was never approved or signed by the President of the Republic of Texas, but on the contrary it was vetoed by him, and said act was never passed in the manner prescribed by the constitution of the said Republic. For he says that when the said act was vetoed by the President, it was returned to the house, or where it originated, with his reasons for not approving, and for vetoing the same, which said reasons were never spread upon the journals of said house before the said bill was reconsidered and finally acted upon by said house; and the said defendant further says that the said act being so disapproved and vetoed, the vote on the reconsideration and final action of the Senate upon the same was not recorded by ayes and noes, and this he is ready to verify.

2d. Because he says, that subsequently to the passage of the aforesaid act, to wit, on the 29th day of January, 1840, an act to detect fraudulent land certificates, &c., hereto attached, marked A, was passed by the Congress of said Republic, and the board of commissioners therein provided for was duly elected for the county of Jasper. That said board discharged their duty in said last mentioned county as required

by the provisions of the said last mentioned act, being first commissioned and sworn as the law required, and fully authorized to act under the law, and that they failed and refused to report to the commissioners of the general land office the certificate described in the plaintiff's petition, as one which had been granted to a legal claimant, and also refused and failed to report said certificate to the said commissioners as either genuine or legal, whereby the said defendant says that the said certificate was rendered illegal, null, and void; and that no survey could be made thereupon under the act of 5th of February, 1840, entitled an act prohibiting the location of fraudulent land claims hereto attached, marked B; and that under the eleventh article of the State constitution of 1846, and under the laws of the Republic of Texas, the said certificate, and all locations and surveys made therein, are null and void, and this the defendant is ready to verify.

3d. Because he says that no witness was ever examined to prove that any person was entitled to said certificate, and that Felix G. Hunt is a fictitious person, and that consequently said certificate was fraudulent and void, and was based upon a combination of the board who issued the same and others, among whom was the plaintiff, to perpetrate a fraud upon the late Republic, and this the defendant prays may be inquired of by the country, &c.

4th. Because he says that the sundry assignments, transfers, and conveyances, set forth by the plaintiff in his said petition, are not sufficient to entitle him to maintain this proceeding, the said Felix G. Hunt being a factitious person, and incapable in law to execute any assignment or transfer of his interest in said certificate, and this the defendant is ready to verify; and the said defendant further says, that by virtue of the facts and laws set forth in this his said answer, that the location and survey, made by the said plaintiff upon his said certificate, purporting to have been issued to the said Felix G. Hunt, was from the beginning illegal, null, and void; that the said land belonged to the State of Texas, as vacant and unappropriated land, and was as such located and caused to be surveyed by the defendant as assignee of a certain certificate of head-right claim, issued to a certain Henry Ferguson, by the land commissioners of the county of Jasper, dated the 9th of January, 1840, for twelve hundred and eighty acres of land, which said certificate was duly recommended for patent by the board of commissioners, appointed under the act of the 29th January, 1840, to investigate the transactions of the boards of land commissioners, under the act of 14th December, 1837; and that the discussion and wrongs complained of by the said plaintiff were acts of ownership exercised by him, the defendant, under and by virtue of his survey, upon said certificate; and that under and by virtue of the same he is duly seized, according to law, in his demesne as of fee of the said close and premises complained of, and that the right and title to the same belongs to him, and not to the said plaintiff; and he prays the court to dismiss him hence with his costs.

F. H. MERRIMAN,
Att'y for Defendant.

A.

An act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants.

Sec. 1. Be it enacted by the senate and house of representatives of the Republic of Texas, in Congress assembled, That there shall be elected, by joint vote of both houses of congress, three commissioners, whose duty it shall be to visit each county in the Republic, the county seat of which is east of the Brazos river; and also three other commissioners, whose duty it shall be to visit each county, the county seat of which is west of the Brazos river, and in conjunction with the county commissioners to be elected in like manner by congress from the respective counties for which they are to act, to inspect the records of the boards of land commissioners, and ascertain, by satisfactory testimony, what certificates for land have been issued by the respective boards to legal claimants, and report as soon thereafter as practicable to the commissioners of the general land office such certificates as they find to be genuine and legal, setting forth in their reports the number and date of the certificates, the quantity of land and the name of the person to whom issued; in which report at least two of the general commissioners, and two of the county commissioners, must concur.

Sec. 2. Be it further enacted, that each of the general commissioners, before entering upon the duties of their appointments, shall be commissioned by the President, and shall take and subscribe, before some district judge, or chief justice of a county, the following oath: "I do solemnly swear that as a commissioner to investigate the transactions of the boards of land commissioners, I will honestly and faithfully discharge my duties, and will not report or recommend to the commissioner of the general land office any certificate that I do not believe to be a genuine and legal claim against the government, and issued in conformity with the provisions of the constitution, and of the laws granting donations of land to emigrants; and I do also swear, that I will, neither directly or indirectly, purchase or trade, in any way, for lands, or certificates for lands, during the term I am acting as commissioner to investigate the records of the boards of land commissioners for the several counties for which I am appointed; and that I will not report or recommend to the commissioner of the general land office any certificate for land, in which I am in any [way] interested." And each of the county commissioners, before entering upon the duties of his appointment, shall take and subscribe the same oath before some chief justice of a county, or before one of the general commissioners; which oath the person so administering shall have recorded in the county court clerk's office of the county; and it shall be the duty of the district judge, or chief justice of a county, administering the oath of the general commissioners, to endorse the same on the back of their commissions.

Sec. 3. Be it further enacted, that the commissioners east of the Brazos river shall meet at the town of Milan, in the county of Sabine,

on the first Monday in February next, or as soon thereafter as practicable, and continue their labors until they shall have visited every county east of the Brazos, and made report to the commissioners of the general land office as required by this act; and the commissioners west of the Brazos shall meet at the town of Nashville, in the county of Milam, on the first Monday in February next, or as soon thereafter as practicable, and continue their labors until they have visited every county west of the Brazos, and reported as required above to the commissioners of the general land office.

Sec. 4. Be it further enacted, that it shall be the duty of the of the general land office, upon the return of a survey, made in accordance with law, and by authority of any certificate that shall be returned as genuine and legal by the commissioners appointed by this act, and as acquired by this act to make out and deliver to the rightful owner a patent for the same, unless it shall appear from the records of his office, or from information on oath given him, that there is some illegality in the claim; in such case, he shall refer the matter to the attorney general, whose decision in writing shall be sufficient authority for him to issue or withhold the patent, as the case may be.

Sec. 5. Be it further enacted, that the commissioner of the general land office is hereby prohibited from issuing a patent upon any survey that shall not have been, or may hereafter be made, by authority of a certificate returned as genuine and legal by the commissioners appointed by this act, or by authority of a warrant issued for military services after the same shall have been presented to, and approved by, the secretary of war, or by authority of a certificate issued by special act of Congress; and any patent issued contrary to the provisions of this act, shall be null and void; and the commissioner of the general land office, issuing a patent contrary to the provisions of this act, shall be deemed guilty of a high misdemeanor, and on conviction thereof, before the district court, shall be fined in a sum of not less than five thousand dollars, unless the person claiming such patent shall produce to the commissioner of the general land office the judgment or decree of a district court of this Republic, from which no appeal was taken within the time prescribed by law, and that he is justly entitled to the amount of land under the constitution and laws of this Republic.

Sec. 6. Be it further enacted, that the commissioner of the general land office shall, in every instance of a head-right claim, make out the patent in the name of the original claimant; and the patent made out in the name of any other person shall be null and void.

Sec. 7. Be it further enacted, that any person claiming land by virtue of an assignment made previous to the issuing of the patent by the government on the said claim, shall have six months from the issuing of the said patent to have the assignment proved up and recorded in the county where the land is situate; and any assignment proven up and recorded, as required by law, within the said six months, shall be as valid in law as if it had been proven up [and] recorded at the time the said transfer was made.

Sec. 8. Be it further enacted, that in all cases where appeals have been taken to the district court from the boards of land commissioners, in accordance with section the 16th of the land laws, passed December the 14th, 1837, and when said appeals have been decided by the verdict of a jury in favor of appellants, it shall be the duty of the commissioners herein appointed, to report such claims, as having been passed by the judiciary, on which it shall be the duty of the commissioner of the general land office to issue patents as required above.

Sec. 9. Be it further enacted, that should a vacancy occur in the board of general commissioners, it shall be the duty of the President to fill the vacancy as early as practicable; and should a vacancy occur in any of the boards of county commissioners, the board of general commissioners shall fill the same.

Sec. 10. Be it further enacted, that the general commissioners appointed by this act shall receive, as compensation for their services, ten dollars per day from the time they commence their labors until they shall have visited all the counties which by this act they are required to visit, and five dollars for every twenty-five miles they must necessarily travel in going to the place of their commencement, and for returning from the last county they visit to the seat of government, and from thence to their place of residence; and the county commissioners shall receive five dollars per day for the time they are actually employed.

Sec. 11. Be it further enacted, that there be, and is hereby specially appointed, for the purpose contemplated in this act, the sum of twenty thousand dollars of the promissory notes of the government, and the treasurer is hereby authorized and required to pay five hundred dollars, in advance, to each of the six general commissioners, and to pay to the county commissioners, upon the certificate of the general commissioners, or any two of them, the sum of five dollars per day for the time they were actually employed.

Sec. 12. Be it further enacted, that the clerks of the county courts shall act as clerks to the commissioners appointed under this act; whose duty it shall be to record, in a well bound book, a synopsis of the certificates approved and returned to the general land office as genuine and legal, stating the number, the date, the quantity of land, and the name of the claimant; which book of record, after being approved and signed by the commissioners, shall be attested by the clerk, and filed in his office for public reference. It shall also be the duty of the clerk immediately to make out two copies of said synopsis, one of which shall be retained by the general commissioners, and the other transmitted by them to the commissioner of the general land office; and, in case of the absence of any of the clerks, it shall be the duty of the commissioners to appoint some suitable person to act as clerk; and the said clerks shall receive for their services five dollars per day for the time they are actually employed; to be paid upon the certificate of any two of the general commissioners.

Sec. 13. Be it further enacted, that no member of Congress shall be elected to the office of commissioner under the provisions of this act.

Sec. 14. Be it further enacted, that no individual, who has heretofore been employed in any of the land offices in any of the counties of this Republic as land commissioners, shall be eligible to the office of either general or county commissioner.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Vetoed by the President, and passed by a constitutional majority in the House of Representatives, this 28th January, 1840.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.

Vetoed by the President, and passed by a constitutional majority of the Senate, this 29th January, 1840.

DAVID G. BURNET,
President of the Senate.

B.

An act prohibiting the location of fraudulent land claims.

Sec. 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That, from and after the first day of May next, it shall not be lawful for any county or deputy surveyor to locate any certificate for land, or to survey any land for any person or persons holding a certificate, unless the same be certified under the hand and seal of the county court clerk of the county where the certificate was issued, or of the county where it is proposed to be located; or be certified, under the hand and seal of the commissioner of the general land office, that the same has been reported by the commissioners appointed under an act of Congress to detect fraudulent land certificates, &c., passed January, 1840, as a genuine and legal claim against the government of Texas; and any surveyor offending against the true intent and meaning of this act, shall be deemed guilty of a high misdemeanor; and, on conviction thereof before a district court, shall be removed from office, and fined in a sum of not more than five thousand dollars, at the discretion of the court.

Sec. 2. Be it further enacted, that any survey made contrary to the meaning and intent of this act shall be null and void.

Sec. 3. Be it further enacted, that it is hereby made the duty of the commissioner of the general land office, so soon as returns are made to this office by the commissioners appointed under an act to detect fraudulent land certificates and provide for issuing patents to legal claimants, passed January, 1840, and in accordance with said act, to make out and transmit, as soon thereafter as practicable, to the county clerk of each county of the Republic, a full and true copy of the return made from the several counties.

Sec. 4. Be it further enacted, that a sufficient amount of the pro-

missory notes of the government be, and the same is hereby, appropriated for defraying the expenses of having printed a sufficient number of the returns, as required above.

DAVID S. KAUFMAN,
Speaker of the House of Representatives.
DAVID G. BURNET,
President of the Senate.

Approved February 5th, 1840.

MIRABEAU B. LAMAR.

In the district and circuit court for the circuit of Texas.

JAMES PHALEN, a citizen of the State of New York,
agst.
DAVID B. HERMAN, a citizen of the State of Texas.

And the said plaintiff comes into court this 15th day of January, A. D. 1847, and says that the said defendant is guilty in manner and form as he has in his petition alleged and set forth.

And for further replication he says, that by reason of any thing in the plea of the defendant alleged, he ought not to be barred from having and maintaining his said action, because he says, that as to so much of the said plea as alleges that the act entitled an act to reduce into one act, and to amend the several acts relating to the establishment of the general land office, is unconstitutional and void. He says that the same was passed in the manner prescribed by the constitution of the Republic of Texas; that the same has since its passage been repeatedly recognised as a good and valid law by divers acts subsequently passed by the congress of said Republic, and also by the constitution and statutes of the State of Texas. And he says, that the same is a constitutional and valid law, and is, in fact, the foundation of the titles under which most of the occupied lands in Texas are held.

And as to so much of said plea as alleges that the board of commissioners elected and qualified under an act entitled an act to detect fraudulent land certificates, &c., failed and refused to report to the commissioner of the general land office the certificate described in the plaintiff's petition as genuine and legal, the plaintiff admits the same to be true. But as to the act last above referred to, and the act entitled an act prohibiting the location of fraudulent land claims, passed on the fifth of February, A. D. 1840, and the eleventh article of the constitution of the State of Texas, set forth by the defendant in his said plea as annulling and avoiding the certificate and survey of the plaintiff set forth in his petition, the said plaintiff says, that each and both of the said acts are and were from the beginning unconstitutional and void, by virtue of the provisions of the respective constitutions of the Republic of Texas and the State of Texas, and of the United States, and that the said eleventh article of the constitution of the State of Texas is

void in itself, and because it infringes the provisions of the Constitution of the United States.

And as to so much of the said plea as alleges that no witness was ever examined to prove that any person was entitled to the certificate of the plaintiff, and that Felix G. Hunt was a fictitious person, and the alleged legal consequences deducible therefrom, the said plaintiff admits, that if in the judgment of the court said facts be legal and competent evidence in the trial of the issues in this cause, and could be given in evidence to invalidate the plaintiff's certificate set forth in his said petition, then the defendant's witnesses in court would prove the said facts, and the same are admitted to be true; but the legality and competency of such evidence, and any legal or proper effect thereof, in or connected with the issues aforesaid, he wholly denies; but, without this, he denies that the said certificate was fraudulent and void, and also any privity or combination with the board of land commissioners.

And as to so much of the said plea as alleges the insufficiency of the assignments, transfers, and conveyances set forth in plaintiff's petition, by reason of Felix G. Hunt being a fictitious person, the said plaintiff says that the same are sufficient in law, no proof being admissible that shows that Felix G. Hunt was a fictitious person, as is alleged by the defendant.

And of these several replications he prays the judgment of the court.

And as to any and all other matters and allegations contained in the defendant's plea and answer, not hereinbefore sufficiently replied to, confessed and avoided, traversed or denied, the plaintiff says that the same, in manner and form as pleaded by the defendant, are not sufficient in law to bar him from having and maintaining his action aforesaid; and of this he prays judgment of the court.

JOHNSON, ALLEN & HALL,
Att'ys for pl'ff.

In the district and circuit court, district of Texas.

JAMES PHALEN, a citizen of the State of New York,
vs.
DAVID B. HERMAN, a citizen of the State of Texas.

And this day, the fifteenth day of January, A. D. 1847, the said defendant comes and says, that the petition of said plaintiff, and matters therein contained, are not good and sufficient in law to maintain his said action, and of this he prays the judgment of the court.

F. H. MERRIMAN,
Att'y for Defd't.

In the district and circuit court of Texas.

JAMES PHALEN, a citizen of the State of New York,
vs.
DAVID B. HERMAN, a citizen of the State of Texas.

And this day, the fifteenth day of January, A. D. 1847, the said

plaintiff comes and says, that his said petition and the matters therein contained are good and sufficient in law to maintain his said action.

JOHNSON, ALLEN & HALL,
Att'ys for Pl'ffs.

United States district court, district of Texas.

I, Thomas Bates, clerk of the United States district court, for the district of Texas, do hereby certify, that in compliance with the order of the judge, a true copy of said order is hereto attached. I have made up a complete record of the proceedings in the case of James Phalen vs. David B. Herman, and do hereby certify, that the foregoing forty-six and one half pages, contain a full, true, and perfect transcript of the records in the above entitled case, as now appears of record in my office; and I do further certify, that this authenticated copy of the proceedings and order of the judge in this case, to the circuit court of the United States, for the circuit of Louisiana, sitting at the city of New Orleans, the same being the most convenient circuit court in the next adjacent State hereto, for such order and proceedings in said circuit court of Louisiana as to the said court may seem agreeable to law.

Given under my hand and seal of court, at the city of Gal-
[L. S.] veston, this 23rd day of January, A. D. eighteen hundred and forty-seven.

THOS. BATES, *Clerk*.

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

Afterwards, to wit, on the 16th day of February, A. D. 1847, at a circuit court aforesaid, in session at New Orleans, the following orders were entered on the minutes of said court:

JAMES PHALEN
vs. } No. 1,569.
DAVID B. HERMAN.

The trial of this case being assigned for this day, on motion of —— Johnson, attorney for plaintiff, it is ordered that this case be consolidated with the case of James Phalen vs. David B. Herman, No. 1,570 of the docket of this court, and that said cases be heard together.

JAMES PHALEN vs. David B. Herman, } No. 1,569.
JAMES PHALEN vs. David B. Herman. } No. 1,570.

These cases having been taken up this day, said case was opened to the court by —— Johnson, attorney for plaintiff; whereupon it was considered by the court that the further trial of these cases be, and the same is hereby, continued until to-morrow the 17th inst., at 10 o'clock a. m.

Afterwards, to wit, on the 17th day of February, A. D. 1847, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

JAMES PHALEN vs. David B. Herman, } No. 1,569.
JAMES PHALEN vs. David B. Herman, } No. 1,570.

The argument of these causes being resumed this day at 10 o'clock, a. m., said argument proceeded on behalf of the plaintiff until 3'clock, p. m., when the same closed.

Whereupon it was ordered by the court that the further argument of these causes be continued.

And afterwards, to wit, on the 22d day of March, A. D. 1847, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

JAMES PHALEN vs. David B. Herman, } No. 1,579.
JAMES PHALEN vs. David B. Herman, } No. 1,570.

These cases having been argued and submitted to court on behalf of plaintiff, at a former day of this court, the Hon. Theo. H. McCaleb presiding, and said argument having been continued over, said argument was resumed this day before his honor Theo. H. McCaleb; by Volney E. Howard for the defendant, and closed; whereupon said cases were submitted to the court, who took the same under advisement.

Afterwards, to wit, on the 30th day of June, A. D. 1847, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

JAMES PHALEN
vs. } No. 1,570.
DAVID B. HERMAN.

This cause came on to be tried at the present term of this court, and was argued by counsel, and submitted to the court; whereupon, and after mature consideration thereof upon the transcript of the records as certified to this court from the district of Texas: It is ordered, adjudged, and decreed, that the land certificate set forth and described in the pleadings be, and the same is hereby, declared valid in law, and as such confers upon plaintiff, James Phalen, a legal title to the land therein specifically set forth and described: that the defendant, David B. Herman, be disseized and dispossessed thereof, and plaintiff adjudged the legal proprietor, and as such awarded his writ of possession therefor, together with his costs in this behalf expended, to be taxed.

Judgment rendered June 30, 1847. Signed 7th July, 1847.

THEO. H. McCALEB, *U. S. Judge.* [L. S.]

And afterwards, to wit, on 27th March, 1849, the following order was entered on the minutes of said court:

JAMES PHALEN vs. David B. Herman, } 1,569.
JAMES PHALEN vs. David B. Herman, } 1,570.

On motion of E. T. Stewart, esq., of counsel for defendant, and on his filing his petition, representing that said defendant felt aggrieved at the judgment rendered in the above entitled cases on the 30th June, 1847, and prayed for a writ of error returnable to the next term of the Supreme Court of the United States, it is therefore ordered that a writ of error be, and the same is hereby allowed, to the said defendant, returnable to the next term of the Supreme Court of the United States, on his furnishing his bond, with Nathan Jarvis as surety, in the penal sum of one thousand dollars, conditioned according to law.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth circuit, and eastern district of Louisiana, do hereby certify, that the foregoing sixty-one pages [are] a full, faithful, true, and complete transcript of the record and proceedings in the case of James Phalen vs. David B. Herman, No. 1570, so far as the same now remain on file in the said court.

In testimony whereof I have hereunto signed my name, and affixed the seal of said court, at the city of New Orleans, this 20th [SEAL.] day of June, A. D. 1849, and the seventy-third year of the independence of the United States.

EDMUND RANDOLPH, *Clerk*;
Per J. W. GURLEY, *Dep. Clerk*.

United States of America, circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

I, Theodore H. McCaleb, United States judge, for the eastern district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that J. W. Gurley, who signed said Edmund Randolph's name as clerk, was at the time of signing the same, the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the eastern district of Louisiana, this 20th day of June, A. D. 1849.

THEO. H. McCALEB. [SEAL.]

UNITED STATES OF AMERICA, *ss*.

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between James Phalen and David B. Herman, a manifest error hath happened, to the great damage of the said David B.